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AMENDED IN ASSEMBLY JUNE 30, 2004

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AMENDED IN ASSEMBLY JUNE 16, 2004

AMENDED IN SENATE MAY 11, 2004

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AMENDED IN SENATE APRIL 12, 2004

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1386

Introduced by Senator Vasconcellos
(Coauthor: Assembly Member Goldberg)

February 18, 2004

An act to add Article 9 (commencing with Section 49052) to Chapter 6 of Part 27 of the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

SB 1386, as amended, Vasconcellos. Pupils: drug and alcohol testing.

Existing law authorizes a superintendent or principal of a school to suspend or expel a pupil ~~that~~ *who* commits one or more of enumerated acts including, among others, certain specified acts regarding the use, possession, or offering of intoxicants.

This bill would provide for the drug or alcohol testing of a pupil only upon a reasonable suspicion, as defined, that the pupil is unlawfully

using or has unlawfully used a controlled substance, as specified, or alcohol. The bill would require a school district, if it adopts a drug and alcohol testing policy, to provide adequate notice of the policy to the parent or guardian. The bill would also restrict access to test results to specified individuals. The bill would provide that a school district should seek to ensure that a pupil ~~that~~ *who* tests positive for the unlawful use of drugs or alcohol is referred to a school counselor, a substance abuse professional, or other appropriate school staff, to develop a course of treatment to address the unlawful use of drugs or alcohol.

The bill would also authorize a school district to conduct a random testing program if specified conditions are met, and would require a school within a district that conducts that testing program to conduct certain surveys and to report to the governing board of the school district.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 9 (commencing with Section 49052) is
2 added to Chapter 6 of Part 27 of the Education Code, to read:

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Article 9. Drug and Alcohol Testing

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6 49052. (a) The Legislature finds and declares all of the
7 following:

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9 (1) All pupils and staff in the public schools have an express
10 and inalienable right to attend campuses that are safe, secure, and
11 peaceful, under subdivision (c) of Section 28 of Article I of the
12 California Constitution.

13 (2) Pupils who abuse drugs or alcohol may increase risks to the
14 health and safety of all pupils and negatively impact the learning
15 environment of their schools.

16 (3) All individuals have an express and inalienable right to
17 privacy under Section 1 of Article I of the California Constitution.

18 (4) Random, suspicionless drug and alcohol testing impairs the
19 trust and cooperation between parents, pupils, and school staff that
20 is instrumental to a productive learning environment, thereby
21 distracting pupils, educators, and administrators, from the core
educational mission of the public schools.



(5) Dr. Ryoko Yamaguchi, Dr. Lloyd D. Johnston, and Dr. Patrick M. O'Malley, in an article appearing in the April 2003, edition of the Journal of School Health, conclude that random drug testing is not an effective deterrent to drug use by pupils.

(6) Random drug and alcohol testing programs are costly, absorbing scarce funds that would be better used on core curricula, school security, and drug and alcohol use prevention, education, and treatment.

(7) In the August 1996 issue of Pediatrics, the American Academy of Pediatrics Committee on Substance Abuse concluded that pupil participation in mass random, suspicionless drug screening programs should not be a prerequisite to participation in school activities. The committee also reaffirmed its position that the appropriate response to the suspicion of drug abuse in a young person is the referral to a qualified health care professional for a comprehensive evaluation.

(8) Pupils should not be required to disclose their prescription medication regimen to school officials in the absence of a medical emergency or an otherwise compelling medical need. Random, suspicionless drug testing often requires a pupil to reveal private medical information to nonmedical school personnel.

(b) (1) It is the intent of the Legislature to ban the costly and ineffective practice of random, suspicionless drug and alcohol testing, while preserving the authority of school officials to suspend, expel, or otherwise discipline pupils who violate health and safety rules by using, distributing, or selling drugs or alcohol.

(2) It is the intent of the Legislature to authorize local school officials to use drug and alcohol testing based upon a reasonable suspicion of the unlawful use of drugs or alcohol.

49053. (a) (1) No school district may require or request a pupil to submit to testing of any sample of a pupil's urine, hair, or other bodily tissue or bodily fluid to determine drug or alcohol use, except as provided by this article. A school district may adopt a drug and alcohol testing policy consistent with this article. Drug and alcohol testing is permitted only upon a reasonable suspicion of the unlawful use of a controlled substance enumerated by Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, or alcohol.

(2) A school district that adopts a drug and alcohol testing policy shall provide adequate notice of the policy to the parent or guardian of a pupil enrolled in the school district.

(b) For purposes of this article, “reasonable suspicion” means articulable facts, together with rational inferences from those facts, warranting an objective suspicion that a pupil is unlawfully using or has unlawfully used a controlled substance enumerated by Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, or alcohol. *Reasonable suspicion may include knowledge of the commission by a pupil of the acts enumerated in subdivision (c) or (d) of Section 48900.*

(c) Reasonable suspicion may not be based upon any of the following factors:

(1) Race.

(2) National origin.

(3) Gender.

(4) Socioeconomic status.

(5) Sexual orientation.

(6) Suspicion or evidence of drug use among the pupil’s family members or peer group.

(7) Disability or medical condition.

(8) Religion.

(d) Test results shall be treated as confidential medical records and shall be accessible only to the following individuals:

(1) The pupil subject to testing.

(2) The parent or guardian of the pupil.

(3) The principal or his or her designee who is directly responsible for school discipline and safety.

(4) Appropriate school staff and certified or licensed health care professionals employed by or working with a school district, including physicians, registered nurses, advanced nurse practitioners, counselors, and substance abuse professionals, for whom the information is necessary to facilitate an individualized course of action for the pupil that addresses the unlawful use of drugs or alcohol and supports scholastic success.

(5) A county superintendent of schools and district superintendent of schools.

(6) Appropriate law enforcement authorities pursuant to Section 48902, individuals identified pursuant to Section 49075 or

1 described in paragraph (1) of subdivision (b) of Section 49076, or
2 other individuals pursuant to Section 49077.

3 (e) A school district should seek to ensure that any pupil who
4 tests positive for the unlawful use of drugs or alcohol is referred
5 to a school counselor, a substance abuse professional, or other
6 appropriate school staff. The purpose of such a referral should be
7 the development of an individualized course of treatment that
8 addresses the unlawful use of drugs or alcohol and supports
9 scholastic success.

10 (f) Nothing in this article shall be construed to limit the ability
11 of a school or school district to discipline a pupil under Article 1
12 (commencing with Section 48900).

13 *49054. Notwithstanding Section 49053, a school district may*
14 *adopt a policy to randomly test pupils for drug and alcohol use*
15 *only if all of the following conditions are met:*

16 (a) *The governing board of the school district adopts the policy*
17 *at a noticed public hearing, records member votes on the issue, and*
18 *stipulates written justifications for adopting the policy.*

19 (b) *The program is voluntary for both parents and pupils. Prior*
20 *written consent of the pupil and his or her parent or guardian is*
21 *required for participation. If a pupil is 18 years of age or older,*
22 *only his or her prior consent is sufficient for participation. A pupil*
23 *or parent may revoke consent at any time. If a pupil less than 18*
24 *years of age withdraws consent, the parents of the pupil shall be*
25 *notified.*

26 (c) *The consent to random testing is not a condition for*
27 *participation in school or extracurricular activities.*

28 (d) *A school district employee does not participate in collection*
29 *or analysis of urine, hair, or other bodily tissue or bodily fluid of*
30 *a pupil.*

31 (e) *A pupil participating in the testing program is selected at*
32 *random from a pool of volunteer candidates by an independent*
33 *drug and alcohol testing company or agency that is certified by the*
34 *Drug and Alcohol Testing Industry Association.*

35 (f) *Test results are maintained private and confidential. The*
36 *testing agency shall report its findings only to the pupil and the*
37 *parent or guardian of the pupil.*

38 (g) *Random testing programs are not funded from state or local*
39 *tax revenues. Random testing programs shall be funded*
40 *exclusively by any of the following sources:*

1 (1) Direct payment of fees from parents, guardians, or pupils to
2 the testing company duly authorized by a school or school district
3 to conduct its random testing program.

4 (2) Fees collected by a school or school district from parents,
5 guardians, or pupils to support noncurricular programs or
6 activities.

7 (3) Federal grants expressly intended to fund random drug and
8 alcohol testing programs.

9 (4) Grants from private, nongovernmental entities expressly
10 intended to fund random drug and alcohol testing programs.

11 (h) The drug and alcohol testing company or agency does not
12 use private or personal information gathered from pupils to
13 promote or otherwise encourage the purchase of additional
14 services. Personal information obtained directly or indirectly from
15 activities on school district property shall not be provided to any
16 other entity, business, or subsidiary not directly involved in
17 processing the test. That personal information includes, but is not
18 limited to, names, physical addresses, cellular and landline
19 telephone numbers, and e-mail addresses.

20 (i) The school district notifies the Superintendent of Public
21 Instruction of its implementation of a voluntary random drug and
22 alcohol testing program.

23 49055. A school within a school district that adopts a policy
24 pursuant to Section 49054 shall do both of the following:

25 (a) Enroll in the California Healthy Kids Survey or conduct a
26 similar anonymous survey of pupils to ascertain what effect, if any,
27 random testing has on rates of illicit drug and alcohol use among
28 pupils, and notify the parents of pupils surveyed pursuant to
29 subdivision (b) of Section 51938.

30 (b) Make an annual report to the governing board of the school
31 district on what effect, if any, random testing has on the rates of
32 illicit drug and alcohol use among pupils.

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34 CORRECTIONS

35 Text — Pages 3,4.
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